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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-197144

DATE: July 22, 1980

MATTER OF: Captain Earl A. Small, USAF

DIGEST: Where the dependents of an Air Force officer do not make a move in connection with a permanent change of station (PCS) until after the effective date of the PCS at which time the member's spouse has been granted a divorce and legal custody and control of the dependent child had been awarded to the spouse, the military officer is not entitled to reimbursement for the transportation of the former spouse or dependent child and payment of a dislocation allowance is limited to the without-dependent rate.

May the ^{by} claim ~~of an~~ Air Force officer for dependent travel and dislocation allowance be allowed where the wife and minor child did not travel until 6 months after the effective date of the member's permanent change-of-station (PCS) orders at which time the wife was no longer a dependent because of a divorce and custody of the child had been awarded to her? As explained below, we conclude that the member is not entitled to transportation expenses of his wife or child and the dislocation allowance may only be paid at the without-dependent rate.

This question was presented as a request for an advance decision from the Accounting and Finance Officer at Castle Air Force Base (AFB), California, and has been assigned PDTATAC Control No. 79-41, by the Per Diem, Travel and Transportation Allowance Committee.

Captain Earl A. Small, USAF, was issued PCS orders on March 1, 1978, from Fairchild AFB, Washington, to Castle AFB, California, with an effective date of May 29, 1978. Captain Small had been separated from his wife since December 1977, and the orders of March 1978 did not authorize the transportation of his wife and dependent child. The dependents remained in Spokane, Washington, near Fairchild AFB and the member and his spouse were divorced on October 12, 1978, in the State of Washington

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with custody of the child granted to the wife and child support payments required of Captain Small. On December 2, 1978, the dependent child and former spouse moved to Captain Small's residence near Castle AFB. The member and his former spouse were subsequently remarried. Captain Small thereafter submitted a claim for reimbursement of the travel expense of his dependent child and wife and a dislocation allowance.

A military member who makes a PCS move is entitled to a dislocation allowance under 37 U.S.C. § 407 (1976) in the following circumstances:

"(1) whose dependents make an authorized move in connection with his change of permanent station;

* * * * *

"(3) without dependents, who is transferred to a permanent station where he is not assigned to quarters of the United States."

If the member's dependents move he is entitled to an allowance equal to his basic allowance for quarters (BAQ) for 1 month at the with-dependent rate. If he is without dependents or his dependents do not make a move he is entitled to an allowance equal to his BAQ for 1 month at the without-dependent rate. B-196121, April 8, 1980, and B-176601, March 27, 1973. In the present case since it appears that his dependents were not authorized to move under the orders of March 1978 and did not move at the time of the PCS, Captain Small would be entitled to a dislocation allowance at the without-dependent rate if he was not provided Government quarters at the new duty station.

Travel and transportation allowances for a member's dependents upon a PCS are authorized under 37 U.S.C. § 406 (1976). Implementing regulations are contained in chapter 7, Volume 1, Joint Travel Regulations (1 JTR).

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The definition of dependents is contained in Appendix J of 1 JTR and includes a spouse and a member's unmarried legitimate children under 21 years of age. Whatever may have been the status of the spouse on the effective date of Captain Small's orders, it is quite clear that at the time of her move to California she was not his spouse. Therefore, there was no authority for payment of her transportation expenses.

Paragraph M7000 of 1 JTR authorizes transportation of dependents at Government expense upon a PCS of the member, except:

- "20. for dependent children who are not under the legal custody and control of the member on the effective date of his PCS orders."

The legal custody of Captain Small's minor child was awarded to Mrs. Small in the divorce decree of October 12, 1978. Although the child remained a dependent of Captain Small since the divorce decree did not relieve him of his legal obligation of support, a child must also be in the custody and control of the member in order to permit the payment of change-of-station travel. It is noted, however, that although the divorce decree was not entered until October 12, 1978, Captain Small had received and approved on April 21, 1978, the contents of the proposed divorce decree, including the custody and support provisions pertaining to the minor child. Thus, while not specifically stated, it appears that the child was in fact under the custody and control of Mrs. Small at the time of the PCS. Further, at the time the travel was performed the divorce had been awarded and legal custody and control had been granted solely to Mrs. Small. Therefore, it is our view that in the circumstances presented payment of the transportation expenses of the child is not authorized. 51 Comp. Gen. 716 (1972); B-186308, July 22, 1976; B-178229, September 14, 1973; B-176601, March 27, 1973; and B-178191, June 21, 1973.

Accordingly, the voucher submitted may not be certified for payment and will be retained here. If

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Captain Small was not assigned to Government quarters on his PCS and if he has not been paid a dislocation allowance, a dislocation allowance at the without-dependent rate may be paid in accordance with this decision.

Shilton J. Aorolan

For the Comptroller General
of the United States